

**Arizona State Board of Homeopathic Medical
Examiners
Minutes of Regular Meeting
January 9, 2007**

I. CALL TO ORDER

Presiding officer, Charles Schwengel DO, MD(H), called the meeting to order at 9:00 a.m.

ROLL CALL

Present:

Charles Schwengel, DO, MD(H)
Martha Grout, MD, MD(H)
Don Farris
Garry Gordon, MD, DO, MD(H)
Todd Rowe, MD, MD(H)
Marie Stika

Keely Verstegen, Assistant Attorney General, Christine Springer, Executive Director and members of the public were also present. Ms. Verstegen was present at the meeting until 1:15 p.m.

II. REVIEW/APPROVAL OF MINUTES

Regular Minutes – November 14, 2006

Review of the regular session minutes of November 14, 2006 was deferred to the next meeting of the Board.

Executive Session Minutes – November 14, 2006

Dr. Grout moved to approve the November 14, 2006 executive session minutes. Mrs. Stika seconded the motion that passed unanimously.

III. REVIEW, CONSIDERATION, AND ACTION ON PENDING APPLICATIONS

Physicians

Dr. Rowe announced his intention to recuse from the discussions of the applications of Dr. Gregory Meyer and Dr. Elliot Schmerler on the basis of special knowledge of the applicant.

Gregory O. Meyer, M.D.

The Board reviewed Dr. Meyer's application and conducted the oral examination. Following Dr. Meyer's presentation Dr. Gordon moved to approve the application. Dr. Grout seconded the motion that passed with a majority vote.

Vote: 5-0 Grout, Schwengel, Farris, Gordon, Stika
Rowe recuse

Elliott Schmerler, M.D.

In response to a question from Dr. Schwengel relating to a previous conviction for tax fraud, Dr. Schmerler stated that he was no longer on probation and had complied with all

requirements relating to the sentence. Dr. Schmerler also explained that he had been granted an active M.D. license in Nevada and was in process with an application at the Arizona Medical Board. The Board discussed the application and requested that Dr. Schmerler proceed with the presentation of his oral examination.

Dr. Gordon noted that he was convinced the applicant had been rehabilitated and in as much as the tax conviction was unrelated to the practice of medicine he made a motion approving the application. Mr. Farris seconded the motion that passed with a majority vote.

Vote: 5-0 Grout, Schwengel, Farris, Gordon, Stika
Rowe recuse

Note: The review of Dr. Warner's application and oral examination were considered later in the meeting. Following the investigative interview held with Dr. Susser (see Agenda Item IV.) and a short break at 10:30 a.m. the Board considered Dr. Warner's application

Stephanie Warner, M.D.

Dr. Warner responded to questions from Drs. Grout and Schwengel concerning her current practice in Nevada and her anticipated employment with Envita, a naturopathic medical center. She commented that the medical center would expand into a hospital environment in the future.

Dr. Schwengel explained that pursuant to A.R.S. §32-2913(A)(2), the written examination had been waived at Dr. Warner's request noting that she holds a current, unrestricted license as a homeopathic medical physician in the State of Nevada. At this point in the review, the board requested that Dr. Warner proceed with the presentation of her oral examination.

Drs. Gordon and Schwengel thanked Dr. Warner complimenting her on her presentation and board usage of the modalities available under the homeopathic medical license.

Dr. Gordon made a motion approving the application. Mrs. Stika seconded the motion that passed with a unanimous vote.

Vote: 6-0 Gordon, Stika, Farris, Schwengel, Farris, Rowe

B. Homeopathic Medical Assistant New Applications

Following a motion by Dr. Grout and a second by Dr. Gordon the medical assistant applications of Jan Burdick, Susan Sletton and Ben Ta'ati were approved by a majority vote. Noting that the evidence of training was not present in the file, the Board deferred the application filed by Catherine Joenz.

Vote: 5-0 Grout, Gordon, Schwengel, Farris, and Stika
Dr. Rowe recuse

IV. REVIEW, CONSIDERATION AND ACTION REGARDING INVESTIGATIONS/COMPLAINTS

Investigative Interviews (pursuant to ARS 32-2934 (C)
06-09 Murray Susser, MD(H)

Dr. Rowe chaired the meeting and Dr. Schwengel recused himself from the discussion and vote.

Dr. Susser was present at 10:00 a.m. with his attorney, Carlos Negrete. In response to a question from Dr. Rowe regarding the status of the Superior Court appeal of the California Medical Board case, Mr. Negrete stated that the California Superior Court had upheld the board decision and the California Court of Appeals had declined to hear the case. Dr. Susser has petitioned the California Board requesting a modification of the California consent agreement in that Dr. Susser has relocated to Arizona and continues to abide by the terms of his agreement with the DEA and does not prescribe Ketamine. He also confirmed his continuing compliance with all of the terms of the California consent agreement.

Mr. Negrete explained further aspects of the case adjudicated by the California Medical Board indicating that the case had alleged that Ketamine had been improperly prescribed to two of Dr. Susser's long time patients. He referenced Dr. Susser's response to the Arizona Homeopathic Medical Board in which he provided medical literature describing the complimentary uses of Ketamine as an effective therapy for fibromyalgia.

Dr. Rowe requested additional clarification of the causes of discipline in the California Medical Board case. Dr. Susser explained that the discipline had been imposed because his utilization of Ketamine in the treatment of the two patients had not fallen within the allopathic standard of care. He further commented that tachyphylaxis is a common condition that patients succumb to when the dosage of certain medications build up in their systems and Ketamine is known to have this effect. Mr. Negrete commented that no evidence was presented in the California case establishing that the patients had abused the drug.

Dr. Rowe commented that he did not find a violation of the homeopathic practice act in Dr. Susser's utilization of Ketamine as an alternative therapy in his care and management of the medical conditions of the two patients.

Dr. Gordon made a motion to dismiss the case. Dr. Grout seconded the motion that passed with a majority vote.

Roll Call: 5-0 Aye

Gordon, Grout, Rowe, Farris, Stika

Schwengel recused

07-01 Thomas Grade MD, MD(H)

Dr. Grade was present at 11:00 a.m. to address the Board. There was a brief discussion concerning whether or not Dr. Grade intended to deceive the Board when he responded "No" when answering a question regarding *other disciplinary actions taken by other medical boards* on his 2006 renewal form. Dr. Grade commented that he had never received the Arizona Medical Board order because he was no longer employed at the address of record that the order was mailed to. His response on his Homeopathic Board 2006 renewal had been accurate on the date the renewal was filed.

Dr. Grout made a motion to adjourn to Executive Session at 11:10 a.m. for legal advice pursuant to A.R.S. §38-431.03(A)(3). Dr. Rowe seconded the motion that passed unanimously. The Board returned to the regular session at 11:20 a.m.

Dr. Schwengel stated that that the agenda incorrectly reflected the consideration of Dr. Grade's complaint review as an investigative interview rather than as *the intended informal interview*. He indicated that the Board could not move forward on the review until proper notice was provided to the public.

Dr. Rowe made a motion to defer the informal interview to the March 13, 2007 regular meeting. Dr. Gordon seconded the motion that passed unanimously.

Ongoing Reviews

06-15 Thomas Lodi, MD, MD(H)

The investigative report was not available at this meeting and the discussion of this matter was deferred to the March 13, 2007 regular meeting.

Status Reports

05-21 Thomas Grade MD, MD(H)

Mrs. Springer explained that this matter was tabled and the Board is awaiting action by the Arizona Medical Board that has primary jurisdiction.

At this point in the meeting the agenda was changed to accommodate additional comments from members of the public (For comments please see agenda item X. Call to the Public).

V. PERFORMANCE AUDIT REVIEW/UPDATE

Pursuant to A.R.S. §38-431.03(A)(2) The Board adjourned to Executive Session at 12:00 p.m. to review confidential material related to the ongoing performance audit. Dr. Grout made the motion that was seconded by Dr. Rowe. Motion carried unanimously.

The Board returned to regular session at 1:05 p.m.

VI. REVIEW, CONSIDERATION AND ACTION ON RULES, LEGISLATION, AND SUBSTANTIVE POLICY STATEMENTS

A. Legislative Committee – Report

Drs. Grout and Rowe presented their report about the research they conducted regarding how other medical boards impose and/or track continuing medical education (CME) The Committee met in December, 2006 and reviewed standards of practice that physicians utilize as approved categories to continue their education. They recommended 20 CME hours per year and urged the board to consider crafting legislation to impose a certain number of required CME hours as a condition of maintaining the license. The optimum time to consider the legislative change would be during the next sunset review process in 2008.

After general discussion regarding the impact of this requirement on board staff and the number and types of CME that would be acceptable, Dr. Rowe suggested a random audit of a percentage of licensees during each renewal period.

There was brief discussion regarding the timing of annual renewal from the current December of each year to a birth date or other method which would have the effect of spreading the amount of work over the full year.

B. Rulemaking Reports

1. Mrs. Springer stated that a Notice of Proposed Rulemaking had been filed at the Office of the Secretary of State. The notice informed the public that amendments to fees authorized in A.A.C. R4-38-105 were contemplated and a public hearing would be held on March 13, 2007 at 11:30 a.m. The notice also provided instruction about where to send written comment. As part of the public participation process, the board urged Mrs. Springer to include notice of the March rulemaking hearing and the reasoning behind the need to increase fees when she mailed 2007 renewal cards to licensed physicians and registered homeopathic medical assistants.
2. As part of her rulemaking report, Mrs. Springer explained that emergency fees currently effective for A.A.C. R4-38-105 would expire on June 6, 2007. She provided information about the process required to make the emergency fees permanent.
3. Mrs. Springer explained that she had not completed the revisions needed to make the rulemaking process move forward with regard to the medical assistant rules AAC R4-38-301 through R4-38-311. Dr. Rowe agreed to assist Mrs. Springer with this task.

VII. REVIEW, CONSIDERATION AND ACTION ON PROFESSIONAL BUSINESS

a. Dr. Gordon referred the board's attention to a 2002 guideline published by the Federation of State Medical Boards (FSMB) regarding Complementary and Alternative Therapies. He urged the board to consider the FSMB historical stance in discouraging the practice of chelation therapy. He urged extreme caution in assuming the traditional allopathic medical boards would have sufficient training to provide a non-biased review of the types of complaints that come before the Homeopathic Medical Board.

Dr. Schwengel directed the board members' attention to the position paper of the FSMB and opined that he disagrees with certain aspects, specifically, the *sale of goods from physician offices*. Dr. Gordon provided an example of how this type of ban would affect the everyday practice of the alternative practitioner.

Dr. Grout urged the board to prepare a position paper relating to their concerns. With regard to the dispensing ban promulgated by the FSMB she stated that a real division in thinking would be present with the allopathic medical board.

b. Dr. Gordon discussed the position of the American Association of Holistic Medicine and stated that traditionally it was oriented towards an integration of the body and mind. Their certification process is not as interventional in its treatment approach as, for example, the American College of Alternative Medicine. He gave a brief review of the history of the American Association of Holistic Medicine

c. The Board discussed the current written examination that quizzed applicants on their knowledge of classical homeopathy. They agreed that, although a bank of updated questions was available for the other modalities recognized as comprising the *practice of homeopathy*, the classical homeopathic component had not been rewritten for many years. Dr. Rowe agreed to recommend committee members that would be qualified to create an updated bank of questions appropriate to the homeopathic component of the written examination. He indicated that he would not participate as a member of the committee.

d. Mrs. Springer briefed the Board about the current process used in granting continuances. She explained that the executive director confers with the board president and a continuance is granted as requested by an attorney to provide due process or to address sudden or incapacitating illness of a licensee. However, granting

the continuances has had a negative effect of extending the complaint review for one and in some cases two years.

Mrs. Stika stated that if a licensee had been provided adequate notice of a scheduled hearing, no continuance should be granted unless an actual emergency, such as a medical problem, was present. Dr. Rowe agreed that review of cases had extended out far beyond what is appropriate. Dr. Schwengel suggested the concept of an investigative interview conducted by staff that would prepare an investigative report for board review. Dr. Gordon expressed concern about due process for the physician and Mr. Farris reminded the board of previous matters that extended far beyond the optimal time frame. There was discussion of alternative methods available to conduct an investigation.

The board requested that Mrs. Springer determine and report back to the board regarding costs associated with using the services of a court reporter, the average number of hours utilized in an investigation and a process that would establish an independent investigative committee.

e) There was a brief discussion of the language that should be added to the renewal application to report disciplinary actions by other state licensing boards. The Board discussed the current language on the renewal of dispensing permit relating to the DEA and any action by a federal or state jurisdiction. They requested that the language be included in the license renewal form.

VIII. REVIEW, CONSIDERATION, AND ACTION ON OTHER BUSINESS

Mrs. Springer provided an update of finances stating that the current case balance as of December 31, 2006 was \$32,709. As of that date 42 licensees had renewed and 11 dispensing permit renewals had been received.

Board members requested that the executive director increase her office hours to 30 per week to more effectively respond to the current work load.

IX. FUTURE AGENDA ITEMS

1. Request Attorney General opinion regarding the intent of A.R.S. §32-2907 in relation to the conduct and timing of investigations involving dual licensed physicians.
2. Discussion of complaint process and related tools.
3. Oral examinations and the issue of confidentiality of the examination content.

X. CALL TO THE PUBLIC

Members of the public addressed the Board following agenda items III. and IV.

Nancy Regovin, retired R.N., stated she approves of alternative medicine. In her experience there were less side effects from alternative therapies and she had received positive benefit from ultra violet therapy.

Linda Heming, retired R.N., stated she hoped that the auditor general would continue the board. She indicated she had formed *Choice*, a patient advocacy group, dedicated to keeping alternative medical care available to Arizona consumers.

Van Porter, retired military, stated that his experience with chelation therapy following heart surgery had been very satisfactory.

James Nichols, Tempe, Arizona, stated he had used alternative medicine for years and was supportive of the boards goals and activities. He urged the state to continue the Board.

Mr. and Mrs. John Hughes were present. Mr. Hughes explained that he was a long time patient of Dr. Josephs and had received 20 chelation treatments. At close to age 79 his medical condition is asymptomatic and he was very pleased with his health status. His energy level is excellent.

Mrs. Hughes stated her energy level had improved with chelation therapy. Both Mr. and Mrs. Hughes expressed their satisfaction with the quality of care provided by Dr. Josephs.

Mrs. Heming made an additional statement expressing her concern that the board may no longer regulate alternative medical doctors. She expressed that she did not understand why the board would not continue to exist.

Mr and Mrs. Hall also addressed the board. Mr. Hall explained that he is a patient of Dr. Lodi and had responded very positively to the therapy provided. He explained that he and his wife had traveled to Arizona to undergo the therapy which was not available in his home state.

Dr. Schwengel thanked the members of the public that had participated in the call to the public.

XI. FUTURE MEETING DATES

A teleconference meeting was scheduled for Friday, January 19, 2007 at 12:00 p.m. to consider the pending homeopathic medical assistant applications.

XII. ADJOURNMENT

The meeting adjourned after a motion from Dr. Grout at 2:30 p.m. Mr. Farris seconded the motion that passed unanimously. The next Regular Meeting of the Board will convene at the State Board's Offices, 1400 W. Washington, Basement Conference Room B-1, Phoenix, Arizona, 9:00 AM, on **March 13, 2007**.

Respectfully Submitted,

Christine Springer
Executive Director